

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY DEONDRE HUNT,

Defendant-Appellant.

UNPUBLISHED

April 24, 2012

No. 299560

Saginaw Circuit Court

LC No. 09-032359-FH

Before: METER, P.J., and SERVITTO and STEPHENS, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions by a jury of four counts of owning a dangerous animal causing serious injury, MCL 287.323(2). The trial court sentenced him as a third-offense habitual offender, MCL 769.11, to concurrent prison terms of five to eight years, with credit for 24 days served. We affirm.

Defendant first argues that the prosecution failed to present sufficient evidence to prove beyond a reasonable doubt that defendant was the “owner” of the dogs involved in the attacks. We disagree.

Sufficiency of evidence involves a legal question subject to de novo review. *People v Chapo*, 283 Mich App 360, 363; 770 NW2d 68 (2009). “In evaluating defendant’s claim regarding the sufficiency of the evidence, this Court reviews the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt.” *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). Therefore, “a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

MCL 287.323 provides, in pertinent part:

(2) If an animal that meets the definition of a dangerous animal in section 1(a) attacks a person and causes serious injury other than death, the owner of the animal is guilty of a felony, punishable by imprisonment for not more than 4 years, a fine of not less than \$2,000.00, or community service work for not less than 500 hours, or any combination of these penalties.

The term “owner” is defined in MCL 287.321(c) as “a person who owns or harbors a dog or other animal.” Defendant challenges the sufficiency of evidence solely with regard to the proofs offered concerning whether he was the “owner” of the dogs in question.

Viewed in the light most favorable to the prosecution, the evidence was sufficient to prove that defendant owned or harbored the dogs that attacked the victims.

Witnesses testified that, on March 5, 2009, the dogs retreated to the yard of 628 South 23rd in Saginaw after attacking Duane VanLanham and Brigetta Hadley and severely injuring them. Defendant denied ever residing at that address, but several other witnesses contradicted this statement.

Defendant admitted owning one adult female brindle pit bull at the time of the attacks, but testified that this dog was with him when the attacks occurred. Defendant admitted to being the former owner of all three dogs involved in the attacks, but claimed that he had given the dogs away and no longer cared for them. However, Hadley, a neighbor, testified that defendant and his girlfriend, Shamorrow Amos, kept multiple brown and black pit bulls at 628 South 23rd and that she frequently saw the dogs in defendant’s yard or in the neighborhood. Hadley recognized the dogs involved in the attack as among those she had seen at 628 South 23rd. Amos approached Hadley after the incident and apologized for “their dogs” attacking her. In addition, VanLanham testified that he had, at a time before the attack, seen the three pit bulls in the yard of the 628 South 23rd residence. Further, the testimony of police officers who responded to the incident tended to show that the dogs lived at the residence.

A trier of fact, viewing the evidence in the light most favorable to the prosecution, could have found beyond a reasonable doubt that defendant owned or harbored the dogs involved in the attacks. Defendant’s contention that the evidence was insufficient because no documents were produced establishing his ownership of the dogs is unavailing. There is no statutory requirement that ownership be proved through documentation or “direct proof,” nor does defendant cite any authority supporting this proposition. “Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of the crime.” *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), quoting *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993).

Next, defendant argues that his trial attorney rendered ineffective assistance by undermining defendant’s defense that he did not own the dogs and by eliciting incriminating testimony from numerous prosecution witnesses. We disagree.

We review de novo the question whether defendant was denied his right to the effective assistance of counsel. *People v Gardner*, 482 Mich 41, 46; 753 NW2d 78 (2008). The United States and the Michigan Constitutions both guarantee a defendant the right to the effective assistance of counsel. US Const, Am VI; Const 1963, art 1, § 20. The Michigan Constitution guarantees a defendant the same right to counsel as the United States Constitution, and Michigan has adopted the standard for evaluating the effectiveness of counsel set out by the United States Supreme Court in *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). *People v Pickens*, 446 Mich 298, 318-320; 521 NW2d 797 (1994).

Counsel is presumed to have provided effective assistance. See *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001). Indeed, a defendant must overcome a strong presumption that counsel employed prudent trial strategy. *Id.* To succeed on an ineffective-assistance claim, a defendant “must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not performing as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Strickland*, 466 US at 687. A defendant must show that counsel’s “representation fell below an objective standard of reasonableness.” *Id.* at 688. A defendant must also show that trial counsel’s deficient performance prejudiced the defense. *Id.* at 692. In order to demonstrate prejudice, a defendant must show a reasonable probability that but for counsel’s error, the result of the proceeding would have been different. *Id.* at 694.

In his appellate brief, defendant implies that trial counsel was ineffective for failing to present the defense that defendant was not the owner of the dogs at issue. In *In re Ayres*, 239 Mich App 8, 22; 608 NW2d 132 (1999), this Court held:

A defendant is entitled to have his counsel prepare, investigate, and present all substantial defenses. Where there is a claim that counsel was ineffective for failing to raise a defense, the defendant must show that he made a good-faith effort to avail himself of the right to present a particular defense and that the defense of which he was deprived was substantial. A substantial defense is defined as one that might have made a difference in the outcome of the trial.

Defendant fails to present any persuasive argument that he made a good-faith effort to avail himself of the defense of non-ownership but that trial counsel rejected the defense. Indeed, trial counsel elicited testimony that, while defendant admitted he had owned all the dogs in question at one time, he had given them away and no longer owned them. Trial counsel also elicited that defendant did not live at the 628 South 23rd residence on the date of the incident, and counsel argued in closing that defendant did not “own” the dogs. We reject defendant’s bare assertion that trial counsel was ineffective for failing to raise the defense of non-ownership.

Defendant also argues that trial counsel rendered ineffective assistance by improperly cross-examining prosecution witnesses. However, the questioning of witnesses, including cross-examination, is a matter of trial strategy. *People v Petri*, 279 Mich App 407, 413-414; 760 NW2d 882 (2008). Testimony elicited from prosecution witnesses on direct examination supported a finding that defendant owned or harbored the dogs that carried out the attacks. While defendant points to several instances where trial counsel elicited somewhat damaging testimony from prosecution witnesses, we find that he has not met the heavy burden of demonstrating that trial counsel’s performance was objectively unreasonable. Indeed, it is likely that counsel was looking for weaknesses or inconsistencies in the witnesses’ testimony that could bolster the defense.¹ In addition, given the testimony elicited on direct examination, we

¹ During closing arguments counsel argued that the dogs in question were “roam[ing] the neighborhood” and that defendant did not own or control them. He even provided a personal

conclude that counsel's questioning did not result in any outcome-determinative prejudice. *Strickland*, 466 US at 694. Reversal is unwarranted.

Finally, defendant argues that the trial court failed to articulate substantial and compelling reasons for exceeding the sentencing guidelines and that resentencing is required. We disagree.

We review for clear error a trial court's conclusion that reasons for a sentencing departure exist. *People v Lucey*, 287 Mich App 267, 270; 787 NW2d 133 (2010); *People v Smith*, 482 Mich 292, 300; 754 NW2d 284 (2008). Whether a departure factor is objective and verifiable is a question of law, and whether the reasons given for departure are substantial and compelling enough to justify that particular departure is reviewed for an abuse of discretion. *Id.* "A trial court abuses its discretion if the minimum sentence imposed falls outside the range of principled outcomes." *Id.*

In general, to justify a departure from the sentencing guidelines, the sentencing court must articulate on the record one or more substantial and compelling reasons for the departure. MCL 769.34(3); *Lucey*, 287 Mich App at 270. MCL 769.34(3)(b) states:

The court shall not base a departure on an offense characteristic or offender characteristic already taken into account in determining the appropriate sentence range unless the court finds from the facts contained in the court record, including the presentence investigation report, that the characteristic has been given inadequate or disproportionate weight.

See also *Lucey*, 287 Mich App at 273.

The sentencing guidelines produced a minimum term range of five to 34 months. However, the trial court departed upward by 26 months and sentenced defendant to 60 to 96 months in prison. The court stated the reasons for the departure as follows:

First, defendant was on notice of the dogs' tendencies and the requirement to have the dogs he owned or cared for under control from the January 2009 complaint and contact he had with animal control. Specifically, I refer to page four of the Presentence Information Report, as well as the trial record.

Secondly, the three dogs that attacked the two victims in this case caused severe, life-threatening injury to two innocent people. These dogs terrorized the neighborhood, and they attacked the two victims. They were dogs that were under defendant's care and control. But for the intervention of Mr. VanLanham, the evidence supports a conclusion that Ms. Hadley's injuries would have been much more severe, if not fatal, as she was a much slighter person than Mr. VanLanham.

anecdote indicating that a neighbor dog visits his own house often and he sometimes gives that dog treats.

Third, as I noted previously, the dogs terrorized the neighborhood and endangered numerous lives.

Finally, the Court notes that the defendant should serve the sentence rendered because this Court believes it is proportionate; and it is the intention of the Court that this sentence be sustained, even if an appellate court determines that any of the rationales given for departure do not survive review.

Defendant argues that the risk of harm to multiple persons had already been taken into account through the sentencing offense and the guidelines variables. While Offense Variable (OV) 9, MCL 777.39, was scored at 10 points (two to nine persons placed at risk of harm), and Prior Record Variable 7, MCL 777.57, was scored at 20 points for two or more concurrent convictions, the sentencing guidelines did not take into account the pattern of conduct by defendant that placed the entire neighborhood and their visitors, not just a few people, at risk of attack. Defendant's dogs were allowed to roam in the neighborhood, terrorizing residents and placing them at risk of harm on a regular basis and over an extended period. The trial court did not abuse its discretion in finding that the endangerment of numerous lives and terrorization of the neighborhood by defendant's dogs represented a substantial and compelling reason to exceed the guidelines.

Defendant also argues that "notice" was an improper reason for departure, because "[a]ll persons are assumed to be on notice of the law" and thus "[a]ll persons have been 'warned' many times of the risks and the illegality of their behavior." Defendant cites no authority in support of the proposition that prior warnings or notice of risks posed cannot be a basis for departure. Further, evidence indicated that defendant had been warned by animal control about letting his dogs roam, and there had been multiple prior confrontations involving defendant's dogs, including an incident of biting. Given defendant's apparent disregard for the wellbeing of others as demonstrated through his complete failure to control the dogs in the wake of multiple complaints and prior attacks, the trial court did not abuse its discretion in finding that the prior notice to defendant and failure to act on that notice constituted a substantial and compelling reason for exceeding the guidelines.

Finally, defendant argues that the severity of the victims' injuries was already taken into account by way of the sentencing offense and the guidelines. However, even though the offense itself and the sentencing guidelines did take into account the severity of the victims' injuries to some extent (for example, OV 3, MCL 777.33, was scored at 25 points based on a "[l]ife threatening or permanent incapacitating injury"), the trial court did not abuse its discretion in finding that the nature of the two victims' injuries was a substantial and compelling reason for departing from the guidelines. The trial court reasonably found that the victims' injuries were given inadequate weight in the scoring of the guidelines. See *Lucey*, 287 Mich App at 273. The first victim, Hadley, suffered irreparable nerve damage, and she indicated in a victim's impact statement that she had missed significant time from work because of the injuries. VanLanham's flesh was torn from his leg and heel, and he subsequently lost five toes and four fingers due to infection. As noted by the trial court, it is likely that Hadley would have suffered more severe, and possibly even fatal, injuries if VanLanham had not come to her aid. Given the horrific nature of the injuries and long-term effects on *multiple* victims, the trial court did not abuse its

discretion in finding that the severity of injuries was a substantial and compelling reason to depart from the sentencing guidelines.

Affirmed.

/s/ Patrick M. Meter

/s/ Deborah A. Servitto

/s/ Cynthia Diane Stephens